

IN THE MATTER OF	:	BEFORE THE
RH DEVELOPMENT, LLC	:	HOWARD COUNTY
Petitioner	:	BOARD OF APPEALS
	:	HEARING EXAMINER
	:	BA Case No. 09-046V

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DECISION AND ORDER

On March 15, 2010, the undersigned, serving as the Howard County Board of Appeals Hearing Examiner, and in accordance with the Hearing Examiner Rules of Procedure, heard the petition of RH development, LLC, (the "Petitioner") for variances to: 1) reduce the 75-foot structure and use setback to 10 feet along a portion of adjoining Parcel 41, and 2) reduce the 75-foot structure and setback to 30 feet along the west lot line where it adjoins Parcel 455, for parking spaces in a POR (Planned Office Research) Zoning District, filed pursuant to Section 130.B.2 of the Howard County Zoning Regulations (the "Zoning Regulations").¹

The Petitioner certified to compliance with the notice, advertising and certification requirements of the Howard County Code. I viewed the property as required by the Hearing Examiner Rules of Procedure.

¹ At the outset of the hearing, the Petitioner submitted a revised Variance Plan, which is intended in part to respond to the Technical Staff Report's ("TSR") recommendations. The TSR recommends the variance petition be denied, based on the proposed 10-foot setback along Parcel 455. In the alternative, the TSR recommends approval if the variance from this west side lot line is reduced to create a 30-foot minimum buffer. According to the TSR, the 30-foot buffer would be the same as is required for B-1 and B-2 properties adjoining residential properties. The increased setback would allow sufficient room for a high quality buffer.

Thomas Meachum, Esquire, represented the Petitioner. John Carney and Richard Hoenes testified on behalf of the Petitioner. Angela Beltram, Kenneth Baldwin and Leonard Baldwin testified in opposition to the affiliated housing development.

FINDINGS OF FACT

Based upon the evidence presented at the hearing, I find as follows:

1. Property Description. The 5.65-acre subject property is located on the south side of Upton Road, about 490 feet east of St. Johns Lane. It is located in the 2nd Election District and identified on Tax Map 24, Grid 5, as Parcel 1190 (the "Property"). The Property currently does not have a street address.

2. The Property takes the shape of a panhandle. The relatively narrow "panhandle" extends to the north, past Upton Road. The bulk of the Property lies southeast of Upton Road and widens as it runs south to its curving frontage along the US 40 right-of-way ("ROW"). The Property's northern section is mostly wooded. The southern section is the site of a large open stormwater management facility. From the current east end of Upton Road, a gravel driveway leads downward in elevation to a metal gate, then continues generally across the Property to its eastern edge, providing access to a telecommunications facility at one of the transmissions towers within the adjoining electric

The revised plan also eliminates the need for a variance for a retaining wall, as was requested in the petition. The retaining wall as shown in the revised plan would comply with the 75-foot setback. In the revised plan, several parking spaces along Parcel 455 are relocated to the building's front.

utility ROW. Topographically, the Property sits at higher elevations along the west lot line and drops about 38-40 feet in elevation to the east lot line.

3. Vicinal Properties. The R-20 (Residential-Single-Family) zoned Parcel 21 adjoins the north side of the Property's panhandle and is the site of a longstanding religious facility, recently approved for an enlargement in BOA Case NO. 07-007C. Parcel 21 is mostly wooded where it adjoins the Property. To the Panhandle's northwest is the R-20 zoned Cove Wood subdivision, a cul-de-sac where the single-family detached dwellings front on Ambra Court. To the panhandle's west is Parcel 41, which runs along the north side of Upton Road. It is improved by a single-family detached dwelling sited about mid-center on the property and fronting on the road. A wide electric utility ROW for high-voltage transmission towers runs along the Property's east side. Route 29 lies on the opposite side of the ROW. Beyond the stormwater management facility in the Property's southern section is US 40. Two parcels adjoin the western bulk of the Property. The B-2 (Business-General) zoned Parcel 38 is the site of a small shopping center. The stormwater management facility on the Property serves this shopping center. The R-20 zoned Parcel 455 is improved with a single-family detached dwelling. The dwelling fronts on the south side of Upton Road.

4. Roads. Upton Road has no defined travel lanes with about 15 feet of paving and a variable ROW. There is no posted speed limit. The estimated sight distance from the location of the proposed driveway entrance is about 330 feet to the west, toward St. Johns

Lane. The TSR concludes sight distance is not at issue in this case, because the proposed driveway is located at the end of a local road.

5. Zoning History. The Property was rezoned from R-20 to POR as Amendment No. 24.91 of the 2005 Continuation of the Comprehensive Zoning Plan process, with a July 28, 2006 effective date.

6. The Proposal. The Petitioner is proposing to develop the Property for an Age-restricted Adult Housing development, a four-story apartment building with 116 dwelling units to be constructed north of the stormwater management facility. The building will comply with all setbacks. Parking for the development would be generally located to the building's north, and in a portion of the panhandle where it adjoins Parcel 41, and along most of the west lot line adjoining Parcel 455. Because the parking would encroach about 45 feet into the 75-foot structure and use setback from the R-20 zoned Parcel 455, the Petitioner is requesting a variance to reduce the setback to 30 feet. Because the parking would encroach about 65 feet into the 75-foot structure and use setback from the R-20 zoned Parcel 41, the Petitioner is requesting a variance to reduce the setback to 10 feet.

7. Petitioner's Exhibit 1 depicts a Type D landscape buffer along the property lines where the variances are sought. Schedule A on the amended plan is intended to demonstrate the increased buffering proposed, compared to what the Landscape Manual requires, a Type C landscape buffer. According to Mr. Carney, the proposed landscaping will provide increased screening.

8. Petitioner's Exhibit 4 is a tax map of the area, on which is marked area properties zoned POR. Petitioner's Exhibit 5 provides Maryland Department of Assessments and Taxation data about the corresponding properties. According to the data, Parcel 852 is about 25 acres in size, Parcel 1180, 6.25 acres, and Parcel 1085, 17 acres.²

9. Referring to Petitioner's Exhibit 3, a chart illustrating the densities of area age-restricted adult housing projects, Mr. Carney testified that the density of the housing project affiliated with this case are consistent with the density of other like projects. He further stated the variances are the minimum necessary to accommodate the development, owing to the existence of the stormwater management facility, which consumed a large portion of the developable area.

10. Mr. Hoenes testified that he was not the property owner when the stormwater management facility was constructed.

CONCLUSIONS OF LAW

The standards for variances are contained in Section 130.B.2.a of the Regulations. Pursuant to this section, I may grant a variance only if the Petitioner demonstrates compliance with all four variance criteria. Based upon the foregoing Findings of Fact, and for the reasons stated below, I find the requested variance complies with Section 130.B.2.a(1) through (4), and therefore may be granted.

(1) That there are unique physical conditions, including irregularity,

² Mr. Meachum proffered that the data for the POR zoned Parcel 80 was not readily available because it contains multiple lots.

narrowness or shallowness of the lot or shape, exceptional topography, or other existing features peculiar to the particular lot; and that as a result of such unique physical condition, practical difficulties or unnecessary hardships arise in complying strictly with the bulk provisions of these regulations.

Compliance with this first criterion is a two-part test. First, there must be a finding that the property is unusual or different from the nature of the surrounding properties. Secondly, this unique condition must disproportionately impact the property such that a practical difficulty arises in complying with the bulk regulations. See *Cromwell v. Ward*, 102 Md. App. 691, 651 A.2d 424 (1995). A “practical difficulty” is shown when the strict letter of the zoning regulation would “unreasonably prevent the owner from using the property for a permitted purpose or would render conformity with such restrictions unnecessarily burdensome.” *Anderson v. Board of Appeals, Town of Chesapeake Beach*, 22 Md. App. 28, 322 A.2d 220 (1974).

In this case, the Property's panhandle lot shape and topography are unique conditions. In combination with the required and significant 75-foot setback from the adjoining residential properties, the resultant buildable area is greatly reduced. I therefore conclude there are unique physical conditions causing the Petitioner practical difficulty in complying with the setback requirements, in accordance with Section 130.B.2.a(1).

(2) That the variance, if granted, will not alter the essential character of the neighborhood or district in which the lot is located; will not substantially impair the appropriate use or development of adjacent property; and will not be detrimental to the public welfare.

The proposed encroachments run along property lines adjoining residentially zoned properties. A ten-foot setback and Type D landscaping is proposed along a portion of Parcel 41. Parcel 41 in this area is moderately wooded or in lawn and the dwelling is at least 200 feet west of the proposed encroachment. A 30-foot setback and Type D buffer is proposed along the west side of Parcel 455. The immediate surrounding neighborhood is developed with a mix of commercial and residential uses and the Property is heavily impacted by its US 40 frontage and the many transmission towers affiliated with a telecommunications facility at one of the transmissions towers. According to the TSR, a 30-foot buffer will not alter the essential character of the neighborhood because the setback is consistent with what is required for the B-1 and B-2 zoned properties in the neighborhood. Additionally, the increased landscaping will screen the parking from the adjacent residences were are some distance from the variance areas. I therefore conclude the proposed variance accords with Section 130.B.2.a(2).

(3) That such practical difficulties or hardships have not been created by the owner provided, however, that where all other required findings are made, the purchase of a lot subject to the restrictions sought to be varied shall not itself constitute a self-created hardship.

The Petitioner did not create the practical difficulties in complying strictly with the setback regulations, in accordance with Section 130.B.2.a(3).

(4) That within the intent and purpose of these regulations, the variance, if granted, is the minimum necessary to afford relief.

The variance requests are driven by the Property's shape and topography. The relief requested is the minimum needed to provide parking for the age-restricted adult housing project, in accordance with Section 130.B.2.a(4).

ORDER

Based upon the foregoing, it is this **29th Day of March 2010**, by the Howard County Board of Appeals Hearing Examiner, **ORDERED**:

That the Petition of RH Development, LLC, for variances to: 1) reduce the 75-foot structure and use setback to 10 feet along a portion of adjoining Parcel 41, and 2) reduce the 75-foot structure and setback to 30 along the west lot line where it adjoins Parcel 455, for parking spaces in a POR (Planned Office Research) Zoning District, is **GRANTED**;

Provided, however, that:

The variances shall apply only to the uses and structures as described in the petition submitted and not to any other activities, uses, structures, or additions on the Property.

**HOWARD COUNTY BOARD OF APPEALS
HEARING EXAMINER**


Michele L. LeFaivre

Date Mailed:

3/30/10

Notice: A person aggrieved by this decision may appeal it to the Howard County Board of Appeals within 30 days of the issuance of the decision. An appeal must be submitted to the Department of Planning and Zoning on a form provided by the Department. At the time the appeal petition is filed, the person filing the appeal must pay the appeal fees in accordance with the current schedule of fees. The appeal will be heard *de novo* by the Board. The person filing the appeal will bear the expense of providing notice and advertising the hearing.